

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2003, by the City of Tallahassee, a Florida municipal corporation ("City"), and Leon County, a political subdivision of the State of Florida ("County").

WITNESSETH:

WHEREAS, the City currently disposes of solid waste collected within the corporate limits of the City at the Leon County Landfill ("Landfill"), which is owned and operated by the County; and,

WHEREAS, the County has indicated its intent to close the Landfill to Class I solid waste; and,

WHEREAS, the County, rather than establishing a new landfill in the County, has further indicated its intent to transport all Class I solid waste for disposal at a landfill located outside the County and has entered into an agreement with Waste Management of Leon County, Inc., for such transportation and disposal; and,

WHEREAS, the County further intends to construct and operate a transfer station for the purpose of transferring solid waste collected within the County from collection vehicles to other vehicles for transportation to the disposal site; and,

WHEREAS, the City desires to deliver to such transfer station Class I solid waste collected within the corporate limits of the City and further desires for the County to furnish, or to provide for the furnishing of, certain transfer, transportation, and disposal services in regard to such solid waste; and,

WHEREAS, the parties have agreed that funds currently held by the County as landfill reserve funds, which have been previously derived in part from tipping fees paid by the City, may be used, subject to this Agreement, for closure costs related to the landfill, for land acquisition and construction costs associated with the transfer station, and for establishing rate stabilization reserves for the Landfill and the transfer station; and,

WHEREAS, the City and the County have determined that it is in their best interests to cooperate in resolving problems relating to disposal of solid waste and desire to address their mutual interests by entering into this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which being acknowledged, the Parties hereby agree as follows:

SECTION 1.0 DEFINITIONS

The following definitions shall apply to terms used in this Agreement:

- 1.01 "City Solid Waste" shall mean Class I solid waste, collected within the corporate limits of the City, or from City-owned facilities located outside such corporate limits, by the City or its contractor.
- 1.02 "Financial Review Committee" or "FRC" shall mean the committee described in Section 5.0 of this Agreement.
- 1.03 "HHWP Fee" shall mean the fee imposed by the County on users of the Transfer Station in accordance with its Household Hazardous Waste Program, its Small Quantity Generator Notification Program, and the related existing Interlocal Agreement between the City and the County
- 1.04 "Defaulting Party" shall mean the Party claimed by the other Party to be in default under this Agreement.
- 1.05 "Landfill" shall mean that certain landfill owned by the County and located in Leon County, Florida.
- 1.07 "Non-defaulting Party" is the Party claiming to be aggrieved by the other Party's alleged default under this Agreement.
- 1.08 "Operating Fee" shall mean the fee set in accordance with Section 4.2 which is charged by the County for services provided at the Transfer Station.
- 1.09 "Operating Costs" shall mean all operating costs for the Transfer Station or the Landfill, as applicable, including without limitation, personnel services, training, contractual services directly related to the operation and maintenance of the Transfer

Station, contractual services directly related to permit compliance, fuel and utilities, materials and supplies, other services and charges, equipment maintenance, capital outlay directly related to the facility, equipment replacement, and annual accrual for closure and post-closure.

- 1.10 "Operations Commencement Date" shall mean the date on which the County begins accepting City Solid Waste at the Transfer Station.
- 1.11 "Party" shall mean either the City or the County, as appropriate.
- 1.12 "Solid Waste Rate Stabilization Reserve Fund" shall be defined as referenced in the County policy attached hereto as Exhibit "A".
- 1.13 "Scheduled Termination Date" shall mean the date on which this Agreement is scheduled to terminate as described in Section 2.0.
- 1.14 "Transfer Station" shall mean the facility designed, constructed, and operated for, or on behalf of, the County for the purpose of transferring solid waste collected within the County from collection vehicles to other vehicles for transportation to a disposal site in accordance with this Agreement.
- 1.15 "Transportation and Disposal Agreement" shall mean that certain agreement between the County and Waste Management of Leon County, Inc., dated November 19, 1998 relating to transportation of certain solid waste from Leon County to a disposal site located outside the County and disposal of such solid waste at that site.

SECTION 2.0 TERM

The Term of this Agreement shall commence on the Operations Commencement Date and shall continue until the Scheduled Termination Date. The Scheduled Termination Date shall be the ten (10) year anniversary of the Operations Commencement Date; provided, however, that commencing on the nine (9) year anniversary of the Operations Commencement Date, absent a prior notice to terminate given in accordance with Section 10.0, the Scheduled Termination Date shall be extended such that a 365-day period is maintained between the current date and the Scheduled Termination Date.

SECTION 3.0 CONSTRUCTION AND OPERATION OF THE TRANSFER STATION

- 3.1 Transfer Station Construction. The City shall provide and construct City water and sewer service to the identified site for the Transfer Station in accordance with a certain letter agreement between the City and County dated June 28, 2001, a copy of which is attached hereto as Exhibit "B" and is by reference incorporated herein. The cost paid by the County for construction of the off-site sewer extension to the identified site will be refunded exclusively from sewer systems charges received by the City from other customers who are served as a result of that extension. Such refunds shall be paid to County in accordance with applicable City policy, but in no event later than forty-five days after the close of the fiscal year. Not later than 30 days after the City has accepted its annual audited financial report, the City shall provide to the County reports adequately summarizing the status of all sewer connection collections related to Exhibit "B" during the prior fiscal year. Such Transfer Station is anticipated to be complete, fully operational, and regularly accepting all City Solid Waste no later than April 30, 2003. The County shall continue to operate the Landfill and to open the Landfill for disposal of all City Solid Waste until such time as the Transfer Station is complete, fully operational, and regularly accepting all City Solid Waste delivered to it.
- 3.2 Reporting. Upon completion of construction and final close-out of the project contracts, the County will provide to the City a full and complete accounting of all related costs and expenses.
- 3.3 Transfer Station Operation. The County shall be solely responsible and liable for the operation of the Transfer Station and the safe, timely, and efficient provision of all services in relation thereto, including without limitation provision of all labor, services, supervision, materials, and equipment, in accordance with all applicable federal, state, and local laws, statutes, ordinances, and regulations.
- 3.4 Standards of Operation. It is the intent of both Parties that the services to be provided by the County and the use of the Transfer Station by the City shall be carried out in accordance with the standards set forth in Exhibit "C", which is

attached hereto and by reference incorporated herein. The County and City respectively agree to timely cure all failures to comply with such Standards within the times set forth in said Exhibit and, unless such failure is caused in whole or in part by an act or omission of the other Party, shall pay to such other Party liquidated costs in applicable amounts as set forth in Exhibit "C". The City, at its option, may deduct such liquidated costs from Operating Fees or any other amounts otherwise payable to the County. The County shall include such liquidated costs in its invoices for services. Either Party may make objection to any assessment of such liquidated costs by the other Party in the manner set forth in Exhibit "C".

- 3.5 The County shall provide reasonable access to the Transfer Station for City personnel or representatives to review compliance by the County with the terms of this Agreement.

SECTION 4.0 FINANCE AND RATES

- 4.1 Transfer Station Development. The County shall bear all costs and expenses of design, permitting, and construction, as described in Section 3.1.

4.2 Operating Fee.

- 4.2.1 The City will pay to the County an Operating Fee in the amount of \$4.41 per ton for all City Solid Waste delivered to the Transfer Station and transferred to other vehicles for transportation to a landfill outside the County. The Operating Fee is intended to fully and completely compensate the County for performance of all of the County's duties, obligations, and responsibilities under this Agreement. With the exception of the HHWP Fee and the fee described in Section 6.2 below, the Operating Fee shall be the only fee paid by the City to the County, or imposed upon the City by the County, in relation to the development or operation of the Transfer Station or the provision of services to the City as set forth in this Agreement.

4.2.2 The Operating Fee set forth in Section 4.2.1 shall remain in effect until the end of the first full County fiscal year following the Operations Commencement Date. Thereafter, the Operating Fee may be adjusted annually, with any adjustment so made becoming effective on October 1 of the subject year, based on the change in the previous year's Consumer Price Index (CPI). The County shall first look to the Solid Waste Rate Stabilization Reserve Fund as a source of funding to avoid or to minimize any adjustment. In any event, any adjustment made by the County shall be limited to the lesser of five percent (5%) or a rate determined in accordance with the following formula:

$$\text{New Price} = [((\text{CPI2} - \text{CPI1}) + \text{CPI1}) \times 0.75] + 1] \times \text{Current Price}$$

Where:

"CPI" is the Consumer Price Index for the U.S. City Average -All Items -All Urban Wage Earners and Clerical Workers, published by the U.S. Department of Labor, Bureau of Labor Statistics.

"CPI1" is the published CPI for July of the year prior to that in which the Operating Fee is being adjusted.

"CPI2" is the published CPI for July of the year in which the Operating Fee is being adjusted.

If the CPI is discontinued, the FRC shall select another index which must be representative of the inflationary or deflationary trends affecting the Parties' performance under this Agreement and which is published by the U.S. government or by a reputable publisher of financial and economic indices. If either party objects, in writing, to the index so selected by the FRC, that dispute shall be resolved in accordance with Section 11.0; provided, however, that the only issues for resolution are whether the index so selected (i) is representative of the inflationary or deflationary trends affecting the Parties' performance under this Agreement and (ii) is published by the U.S. government or by a reputable publisher of financial and economic indices. Changes or adjustments in the Operating Fee shall be subject to review and recommendation by the FRC. The CPI adjustment to the Operating Fee shall not exceed five percent (5%) in any one year.

- 4.2.3 If the CPI adjustment under Section 4.2.2, above, would exceed five percent, by the provisions of this Section 4.2.3, the Operating Fee shall be increased by five percent at that time and the County shall be entitled to receive the additional adjustment (i.e., the amount that exceeds five percent) when the Operating Fee is adjusted the next year, provided the total CPI adjustment never exceeds five percent in any one year. If this Agreement is terminated by either party for any reason, the City shall have no obligation to pay damages or otherwise compensate the County for any previously unpaid CPI adjustment.
- 4.2.4 In establishing the Operating Fee for a particular year, the net income or loss, as set forth in the Leon County Comprehensive Annual Financial Report for the prior year, will be adjusted by adding depreciation expense for all assets, and the net income, as adjusted, shall be either added to or subtracted from the Operating Costs, as appropriate.
- 4.2.5 In addition to the other requirements set forth in this Section 4.2, the Operating Fee charged to the City shall never exceed the similar fee charged to any other user of the Transfer Station.
- 4.3 The County shall assess all users, including the City, a \$0.79 per ton HHWP Fee consistent with the existing Interlocal Agreement between the Parties. In the case of the City, the HHWP Fee shall be in addition to the Operating Fee established in accordance with Section 4.2. Any changes to that fee must be approved by the Financial Review Committee.
- 4.4 Reserve Accounts. Any unreserved retained earnings and the Solid Waste Rate Stabilization Reserve Fund, including all additional funds subsequently accumulated therein, may be used to offset future rate increases and may be appropriated for future Operating Costs if needed to avoid a rate increase. The amounts accumulated in, and the expenditure of, all reserve funds shall be subject to review and recommendation by the FRC.
- 4.5 Annual Reports. The County shall prepare, on a fiscal year basis and in accordance with Generally Accepted Accounting Principles, an annual audited financial statement of all revenues, Operating Costs, and capital costs related to the Transfer Station. A copy of that

statement shall be delivered to the City within thirty (30) days following acceptance by the County of such annual statement.

4.6 Subject to Appropriation. All payment obligations of the Parties as set forth herein shall be subject to appropriation of funding therefor by the applicable legislative bodies; however, failure to appropriate funding adequate to meet such payment obligations shall be deemed a default under this Agreement.

4.7 Payment of Fees. The City shall make payment to the County of all Fees, operating fee, HHWP, and service fee, as required in this Agreement in accordance with the Florida Prompt Payment Act.

SECTION 5.0 FINANCIAL REVIEW COMMITTEE

5.1 A Financial Review Committee ("FRC") shall be established for the following purposes: to provide a forum to review and discuss audited financial statements and other reports prepared in accordance with this Agreement; to discuss other issues related to the Transfer Station; to review and make recommendations regarding the setting of rates relating to the Landfill, proposed changes in the Operating Fee, and proposed changes in the charge described in Section 4.3; to make recommendations regarding (i) the funding of Landfill closure costs, and (ii) the funding and use of the Solid Waste Rate Stabilization Reserve Fund; and to adopt amendments to the Exhibit "C" Standards of Operation. Issues brought before the FRC shall be resolved by majority vote of the members.

5.2 The FRC shall be composed of the following persons: the City Manager, the County Administrator, the City Attorney, and the County Attorney, or their successors or designees, and Community Member to be selected by the other four (4) members. The initial Community Member shall be selected within sixty (60) days following the date first set forth above and shall serve until September 30, 2005; thereafter, each person selected as the Community Member shall serve a two-year term beginning on October 1 after his or her selection. The County Administrator shall act as Chair of the FRC.

SECTION 6.0 TRANSPORTATION AND DISPOSAL SERVICES

- 6.1 The County shall provide for transportation and disposal of all City Solid Waste delivered to the Transfer Station by the City and/or its contractor. The City and/or its contractor shall deliver all City Solid Waste to the Transfer Station.
- 6.2 For all services so provided, and in addition to the Operating Fee, the City shall pay to the County the actual cost of providing such services or an amount equal to the Service Fee, as specified in the Transportation and Disposal Agreement, for all City Solid Waste properly and lawfully transported from the Transfer Station and disposed of in accordance with applicable agreement(s). The fee charged to the City for such services shall never exceed the similar fee charged to any other user of the Transfer Station or recipient of such services.
- 6.3 The County shall cooperate with and support the City in its efforts to have the City named as an additional insured under all insurance policies provided by a contractor pursuant to the Transportation and Disposal Agreement or other applicable agreement with the County. Additionally, the County shall cooperate with and support the City in its efforts to have the City named as an insured party under each bond or other security posted by such contractor to secure its performance under such agreement.

SECTION 7.0 LANDFILL OPERATION AND FINANCE

- 7.1 In addition to its other responsibilities as set forth in this Agreement, the County shall continue to have sole ownership, administrative and funding responsibility for all solid waste collection within the unincorporated areas of the County and all solid waste disposal activities within the County, except as otherwise set forth in this Agreement.
- 7.2 The County shall continue to operate the Landfill and to keep open the Landfill for disposal of all solid waste collected within Leon County until such time as the County finds it in its best interests to close the Landfill to certain types of solid waste and to make alternative arrangements for disposal of such types of solid waste. The City, at all times, will be treated equally with other depositors of solid waste at the Landfill and shall deliver to the County all Class III solid waste collected by the City or its contractor within the corporate limits of the City.

- 7.3 The County shall set fees and charges for the disposal of particular types of solid waste at the Landfill, which fees and charges shall not exceed the direct and indirect Operating Costs for the Landfill. Changes or adjustments to such fees and charges in effect on the date first written above shall be subject to review and recommendation by the FRC. Additionally, the County will maintain a Solid Waste Rate Stabilization Reserve Fund. These funds may be used to offset future rate increases and may be appropriated for future Operating Costs if needed to avoid a rate increase. Funds in such account shall be maintained at a reasonable level and shall be used solely for such purposes. The amounts to be deposited into and withdrawn from such reserves, and the use of such funds, shall be subject to review and recommendation by the FRC.
- 7.4 Annual Reports. The County shall prepare, on a fiscal year basis and in accordance with Generally Accepted Accounting Principles, an annual audited financial statement of all revenues, Operating Costs, and capital costs related to the Landfill. A copy of that statement shall be delivered to the City within thirty (30) days following acceptance by the County of such report.

SECTION 8.0 NOTICES

Any notice permitted or required to be given under the terms of this Agreement shall be in writing, addressed to the Party to whom it is directed, and delivered to it by courier service providing a written record of the date of delivery, or by U.S. certified mail, postage prepaid, return receipt requested, to the address shown below or to such other address as such Party may from time to time designate by written notice.

To City:

City Manager
City of Tallahassee
300 South Adams Street
Tallahassee, FL 32301

With copy to:

City Attorney
City of Tallahassee
300 South Adams Street, Box A-5
Tallahassee, FL 32301

To County: County Administrator
Leon County Courthouse
301 South Monroe Street
Tallahassee, FL 32301

With copy to: County Attorney
Leon County Courthouse
301 South Monroe Street
Tallahassee, FL 32301

SECTION 9.0 INDEMNIFICATION

- 9.1 To the extent permitted by law and subject to the limitations, conditions, and requirements of Section 768.28, Florida Statutes, which the Parties do not waive, each Party agrees to indemnify, defend and hold harmless the other Parties, their officials, officers, and employees, from and against all liabilities, damages, costs and expenses, resulting from or arising out of any acts or omissions by the indemnifying Party, or its officials, officers, or employees, relating in any way to this Agreement, to the Transfer Station, or to the transportation or disposal of any solid waste delivered, by the City or its contractor(s), to the Transfer Station, the Landfill, or any other facility designated by the County.
- 9.2 The County shall require each contractor engaged by the County to perform transportation and disposal services to indemnify and hold harmless the City, its officials and employees, from and against all claims, damages, demands, liabilities, losses, delays, fines, penalties, settlements, injuries and expenses of any kind or nature, including all costs of litigation and reasonable attorney's fees (including costs and fees, for appeals, mediations, arbitrations, and administrative proceedings) (collectively "Claims") which in any way arise out of, result from, or relate to the contractor's failure to haul or dispose of City Solid Waste in accordance with the terms of its agreement with the County. The contractor's obligations shall not be limited by, or in any way to, insurance coverage, including but not limited to benefits payable under any Workers' compensation acts, disability benefit acts, or other employee benefit acts, or by and provision in of exclusion of omission from any policy of insurance. The contractor shall investigate, handle, respond to, provide a defense for, and defend against all such claims at the contractor's sole cost and expense, and shall bear any and all other costs and expenses related thereto, even if the Claims are groundless, false, or fraudulent.

SECTION 10.0 TERMINATION

- 10.1 Either Party may terminate this Agreement after the tenth (10th) year of the Term hereof by giving written notice to the other Party specifying the effective date of such termination no less than 365 days prior to such effective date.
- 10.2 If either Party fails to fulfill any of its obligations under this Agreement through no fault of the other Party, such failure shall be considered a default and shall entitle, but not obligate, the Non-defaulting Party to suspend performance under, or to terminate, this Agreement if the Defaulting Party fails to cure such default within thirty (30) days after receipt of a written notice thereof from the Non-defaulting Party specifying, in reasonable detail, the nature of the default; provided, however, that either Party may invoke the process described in Section 11.0 if there is a dispute as to existence of a default; and provided further that, if such process is invoked, no termination may become effective until thirty (30) days following completion of that process.
- 10.3 Either Party may terminate this Agreement, after first giving the other Party no less than thirty (30) days' written notice of such intent, at any time that such other Party has committed twenty (20) or more violations of the Standards of Operation set forth in Exhibit "C" during the sixty (60) day period immediately preceding the date such notice is given. Such right of termination shall be in addition to other recourse available to the terminating Party.

SECTION 11.0 DISPUTE RESOLUTION

- 11.1 The parties shall attempt to resolve any disputes that arise under this Agreement in good faith and in accordance with this Section. The provisions of the "Florida Governmental Conflict Resolution Act" shall not apply to disputes under this Agreement, as an alternative dispute resolution process, is hereby encompassed within Section 11.0. The aggrieved Party shall give written notice to the other Party, in the manner set forth in Section 8.0, setting forth the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice".

- 11.2 The appropriate City and County department heads shall meet at the earliest opportunity, but in any event within 10 days from the date the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, the department heads shall report their decision, in writing, to the City Manager and the County Administrator.
- 11.3 If the department heads are unable to reconcile the dispute, they shall report their impasse to the City Manager and the County Administrator who shall then convene a meeting at their earliest opportunity, but in any event within 20 days following receipt of the Dispute Notice, to attempt to reconcile the dispute.
- 11.4 If a dispute is not resolved by the foregoing steps within thirty (30) days after receipt of the Dispute Notice, unless such time is extended by mutual agreement of the parties, then either Party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other Party. The mediator shall meet the qualifications set forth in Rule 10.100(c), Florida Rules for Mediators, and shall be selected by the parties within 10 days following receipt of the Mediation Notice. If agreement on a mediator cannot be reached in that 10-day period, then either Party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the parties. The costs of the mediator shall be borne equally by the parties.
- 11.5 If an amicable resolution of a dispute has not been reached within 60 calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the parties, then such dispute may be referred to binding arbitration by either party. Such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).
- 11.5.1 Such arbitration shall be initiated by delivery, from one party (the "Claimant") to the other (the "Respondent"), of a written demand therefor containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either party may make new or

different claims by providing the other with written notice thereof specifying the nature of such claims and the amount, if any, involved.

11.5.2 Within ten (10) days following the delivery of such demand, each party shall select an arbitrator and shall deliver written notice of that selection to the other. If either party fails to select an arbitrator within such time, the other party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days following delivery of the last of such written notices, the two arbitrators so selected shall confer and shall select a third arbitrator. Each of the arbitrators so appointed shall have experience in local government solid waste issues.

11.5.3 The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the third arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48, of the Commercial Arbitration Rules of the American Arbitration Association.

SECTION 12.0 MISCELLANEOUS

- 12.1 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement must be maintained in Tallahassee, Leon County, Florida.
- 12.2 Waiver. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.
- 12.3 Modification. Agreement shall not be extended, changed or modified, except in writing duly executed by the parties hereto.
- 12.4 Binding Effect. This Agreement shall be binding upon the successors and, subject to below, assigns of the parties hereto.
- 12.5 Assignment. Because of the unique nature of the relationship between the parties and the terms of this Agreement, neither Party hereto shall have the right to assign this Agreement or

any of its rights or responsibilities hereunder to any third party without the express written consent of the other Party to this Agreement, which consent shall not unreasonably be withheld.

- 12.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters contained herein, and all prior agreements or arrangements between them with respect to such matters are superseded by this Agreement.
- 12.7 Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 12.8 Ambiguity. This Agreement has been negotiated by the parties with the advice of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any Party as the author hereof.
- 12.9 Public Bodies. It is expressly understood between the parties that the City is a duly incorporated municipal corporation of the State of Florida and that the County is a political subdivision of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by either of the Parties to claim such exemptions, privileges or immunities as may be provided to that Party by law.
- 12.10 Approval of Subcontracts. Subsequent to the date first written above, the County shall not enter into any subcontracts for transportation or disposal of City Solid Waste delivered to the Transfer Station without the review and recommendation of the FRC. The County shall be fully responsible to the City for the completion of all such subcontracted work or services in accordance with the provisions of this Agreement.
- 12.11 Force Majeure. A Party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a "Force Majeure Event" which term shall mean any cause beyond the reasonable control of the Party affected, except where such Party could have reasonably foreseen and reasonably avoided the occurrence, which materially and adversely affects the performance by such Party of its obligations under this Agreement. Such events shall include, but not be limited to, an act of God; disturbance, hostility, war, or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.

- 12.12 Cost(s) and Attorney Fees. In the event of litigation between the parties to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the other Party its reasonable costs and attorneys fees incurred in maintaining or defending subject litigation. The term litigation shall include appellate proceedings.
- 12.13 Records. The County, its subcontractors and consultants, shall maintain, throughout the Term of this Agreement, and retain, until three (3) years following the termination of this Agreement, a complete set of books, drawings, specifications, documents, and other reasonably necessary records relating to provision of services and performance of work under this Agreement, operational receipts and expenses related to the Transfer Station and Landfill, and contracts for services furnished by others. So long as such records are retained, the City or its representative, upon giving no less than five (5) days' prior notice of such intent, shall have the right to inspect the same at any time during normal working hours at the locations where such records are kept in the normal course of business.
- 12.14 Severability. It is intended that each Section of this Agreement shall be viewed as separate and divisible, and in the event that any Section, or part thereof, shall be held to be invalid, the remaining Sections and parts shall continue to be in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed effective the day and year first above written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF TALLAHASSEE

Attest:

By: James O. Cooke Jr.
Gary Herndon
City Treasurer-Clerk

By: Anita R. Favors
Anita R. Favors, City Manager

Approved as to form:

W. Hurley Jr.
City Attorney

LEON COUNTY, FLORIDA

Attest: Robert B. Inzer
Clerk of Circuit Court

By: _____
Deputy Clerk
Board of County Commissioners

By: _____
Tony Grippa, Chairman

Approved as to form:

Herbert W. A. Thiele, Esq
County Attorney

Exhibit A

Leon County Policy for Solid Waste Rate Stabilization Reserve Fund

**Board of County Commissioners
Leon County, Florida
Policy No. 03-**

Title: Policy for Solid Waste Rate Stabilization Reserve Fund
Date Adopted: March 25, 2003
Effective Date: March 25, 2003
Reference: N/A
Policy Superseded: Policy No. 94-1 "Landfill Rate Stabilization Reserve" Adopted February 8, 1994

It shall be the policy of the Board of County Commissioners of Leon County, Florida, that Policy No. 94-1, "Policy for Landfill Rate Stabilization Reserve," adopted by the Board of County Commissioners on February 8, 1994 is hereby repealed and superseded, and a new policy entitled "Solid Waste Rate Stabilization Reserve Fund" is hereby adopted in its place. It shall be the policy of the Board of County Commissioners of Leon County, Florida that:

1. The Solid Waste Rate Stabilization Reserve Fund is established to provide the following:
 - a. To accumulate funding for planned future capital project expenditures;
 - b. Funding for temporary and nonrecurring unexpected capital projects;
 - c. Funding to accommodate unexpected program mandates from other governmental bodies;
 - d. Funding for extraordinary operating expenses.
 - e. Funding for operating expenses in order to stabilize rates.
2. Use of funds from the Solid Waste Rate Stabilization Reserve Fund will be limited to operation of the landfill and transfer station.
3. The Board of County Commissioners must approve requests for use of Rate Stabilization Reserve Fund. The Board will use the procedures and evaluation criteria set forth in this policy. Such requests will be evaluated in insure consistency with other Board policy; the urgency of the request; the scope of services to be provided; the short- and long-term fiscal impact of the request; a review of alternative methods of funding or providing the services; a review for duplication of services with other agencies; a review of efforts to secure non-County funding; a discussion of why funding was not sought during the normal budget cycle; and a review of the impact of not funding or delaying funding to the next fiscal year.
4. The Rate Stabilization Reserve Fund will be budgeted at the excess of revenues over expenditures after the requirements of the balance needed in the Contingency Reserve and Closure Reserve are met. The Rate Stabilization Reserve Fund shall be separate from the Contingency Reserve and Closure Reserve. The County's budget will be amended at such time as the County Commission, by majority vote, authorizes the use of reserves. All requests to the County Commission for the use of Rate Stabilization Reserve Fund shall be accompanied by an addendum prepared by OMB showing the year-to-date activity on the reserves account as well as the current account balance and the net effect on the account of approving the use of reserves.

Page 2 Solid Waste Rate Stabilization Reserve Fund Policy

5. As used in this document, the term "Fund" does not require the establishment of a self-balancing set of accounts, but rather indicates a separate account established within the Solid Waste Enterprise Fund.

Exhibit B

City and County Letter June 28, 2001



CITY HALL
300 S. ADAMS ST.
TALLAHASSEE, FL
32301-1731
850/891-0310
TDD 1-800/955-8771

SCOTT MADDOX
Mayor

STEVE MESSBURG
Mayor Pro Tem

JOHN PAUL BAILEY
Commissioner
CHARLES F. BRIDGES
Commissioner
USURRE LIGHTSEY
Commissioner

AMIA N. FAYERS
City Manager
GARY HODGSON
Tallahassee City Treasurer/Clerk

JAMES R. ENGLISH
City Attorney
SAM M. MCCALL
City Auditor

June 28, 2001

Mike Willett, Director
Leon County Public Works
2280 Miccosukee Road
Tallahassee, Florida 32308

Attention: Jud Curtis

Dear Mr. Willett:

RE: Leon County Transfer Station Sanitary Sewer Extension
Tax Id. No. 21-29-20-611-0000 and 21-32-20-205-0000
Location: Capital Circle at Gum Road
(Outside City limits)

The following outlines our agreements for the installation of City utilities to the above development:

Water

City water exists along Capital Circle and Gum Road. All required potable water meter(s), fire line taps, and fire hydrants will be installed by the City at agreed upon locations as shown on the approved plans. All required cross-connection control devices will be installed by the County prior to connecting the facilities to the city systems.

Sewer

Leon County will deposit with the City of Tallahassee a check in the amount of \$360,000 to design, permit, and install the sanitary sewer to serve the Transfer Station. The \$360,000 is an estimated amount. Prior to the City of Tallahassee awarding a contract for the proposed sewer project, any additional required funds identified by the bidding process will be provided by the County and deposited with the City.

Pre-Construction Conference

Prior to initiating any development activity affecting existing or proposed utility installations, the County and City will hold a pre-construction conference with the sewer contractor and

Leon County Transfer Station Sanitary Sewer Extension
Page 2

representatives from other affected City and private utility departments. A minimum of 72 hours (3 work days) notification should be provided to the participants to allow for scheduling. In addition, approved sewer drawings must be submitted to the affected utility departments prior to the scheduling of the pre-construction conference.

Easements

The City has previously obtained easements from W. Tennessee Street to Capital Circle to construct the proposed sewer extension. Should additional easement be required, the County would assist in the acquisition of those easements. Leon County will provide any required easements to the City at no expense prior to the sewer system being constructed.

Permits

Water Utilities will prepare construction plans and permits for the required sanitary sewer extension for submittal to all permitting agencies. The County shall assist the City in obtaining all applicable permits prior to the City initiating sewer construction. These permits would include, but not be limited to: tree, right-of-way, utility placement, Department of Environmental Protection, Department of Transportation, and County environmental permits.

Inspection Fees

Ordinance 91-0-0016 amended the water and sewer rates and established an inspection fee effective October 1, 1991. "The County agrees to pay the required inspection fees of \$1.31 per foot of gravity main in accordance with section 25-127(c) of the City Code prior to acceptance of sewer facilities." This amount has been included in the estimated construction cost for the project.

Connection Fees

Since the County is funding the extension of the required sewer services from the main to each building, the City will waive the sewer tap fees. The City will however collect any applicable water tap fees and water and sewer systems charges at the rates which are applicable at the time the service is requested. The projected water and sewer systems charges will be based upon 8 Equivalent Residential Connections. These charges may be adjusted to reflect actual flow conditions if found substantially different than those projected. Water and sewer systems charge fees are not included in the \$360,000 cost estimate.

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Sewer Use Policy/Sewer Metering

Monthly sewer usage fees will be based upon the metered water usage plus a flat rate for the projected wastewater flow from the transfer facility. The flat rate will be determined by the General Manager. However, should the actual wastewater amount generated by the transfer station operation exceed 105 percent of the projected flow, then in accordance with section 102.5 of the Sewer Use Policy, a sewer meter may be required by the City. This meter will be designed and installed by the County at County expense. A detailed engineering analysis of projected water and sewer generation rates for a facility of this size and type shall be prepared by the County and submitted to the City for review and approval prior to the City setting the water meter. Also should additional compression of garbage be contemplated in the future, or should any modification in the process be proposed which generates additional wastewater demands over and above the 105 percent of metered flow, then a sewer meter will be installed prior to the anticipated impact.

Sewer Use Policy/Industrial Pretreatment

The iron concentration in the sample from Central Florida was above the City of Tallahassee discharge limit. The discharge from this facility will be subject to the limits provided in Section 101 of the Sewer Use Policy. There were no drawings in the materials submitted. Provision must be made to prevent the discharge of materials that will cause stoppage of the gravity sewer system (see Section 101.1(b) of the Sewer Use Policy). If this is accomplished with a grate or bar screen, it should be designed to retain particles greater than one-half inch. Shop drawings for the screening device will need to be submitted for review and approval to the City of Tallahassee plumbing inspector prior to its construction. The floor wash water will also probably include sand that is brought in on the truck tires and hydraulic oil drips and spills. A sand/oil interceptor shall also be provided for this discharge.

Odor Control

Odor Control for the waste stream generated by the transfer facility will be provided by the County prior to discharging to the City sewer system. Proposed odor control facilities will be operated by and at the County's expense. Should actual conditions dictate the need for additional odor control, the County will make said improvements in a timely manner at their expense.

Refunds

The off-site sanitary sewer extension will be refunded from systems charges collected annually from connections to this system.

Leon County Transfer Station Sanitary Sewer Extension
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This agreement will expire on June 28, 2001, unless an extension is requested in writing and approved by the City Manager prior to the expiration date listed above. I trust this outlines our agreement on June 28, 2001. Should you have any questions, please advise. I am enclosing the original and one copy. Please execute the original and return it to me for our files, retaining the copy for your file.

Sincerely,

James J. Oskowis

James J. Oskowis, P. E.
General Manager
Water Utilities

APPROVED:

[Signature] 7/5/01

Ricardo Fernandez /Date
City of Tallahassee
Assistant City Manager-Utility Services

APPROVED:

[Signature] 6/28/01

Mike Willet /Date
Leon County
Director, Public Works

JJO/THP/ah

Attachments: Approved concept plan

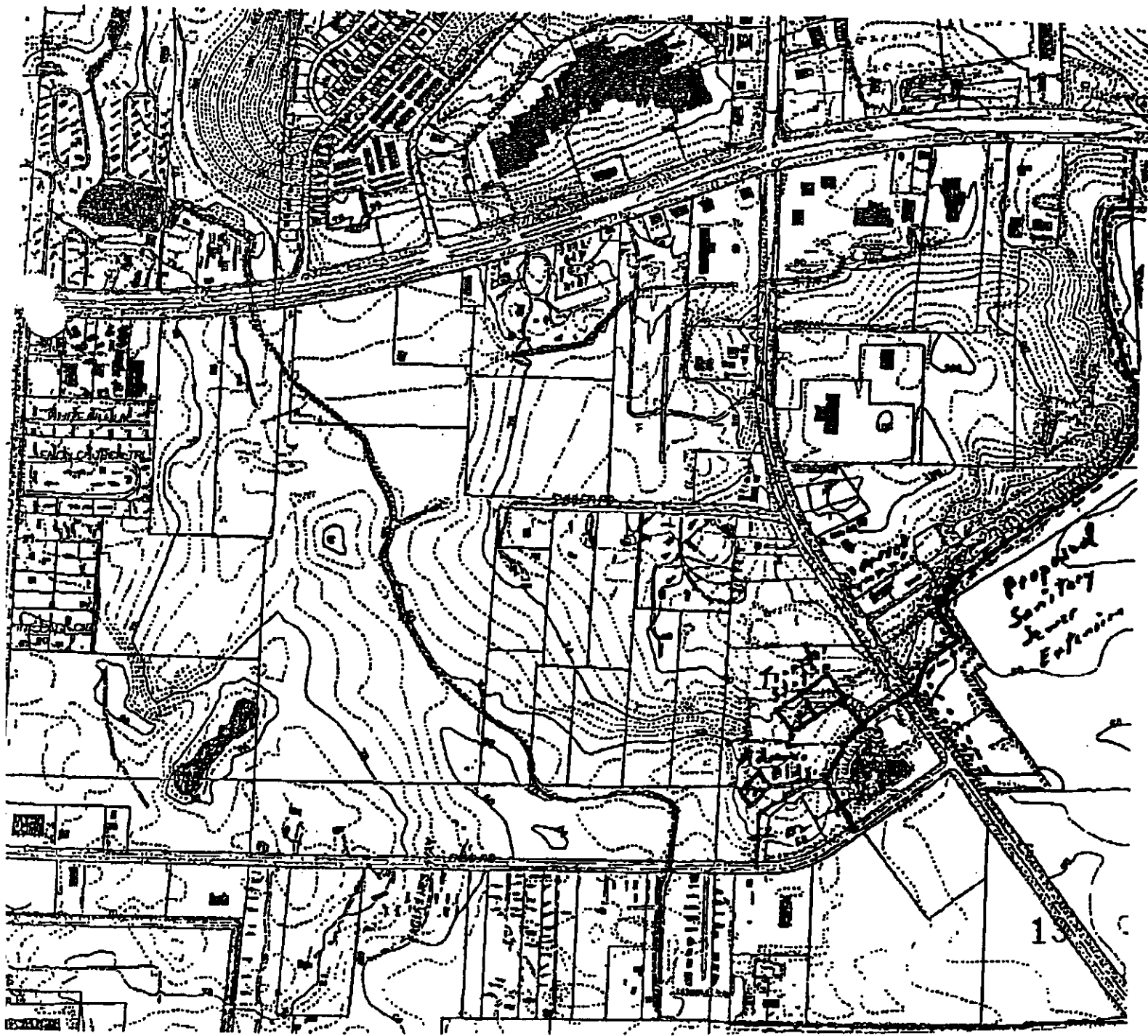


Exhibit C
Standards of Performance and Operation

Exhibit C
Standards of Performance and Operation

1.0 Definitions

- (1) "Acceptable Waste" means Solid Waste that may be disposed of lawfully in a Class I Landfill.
- (2) "Class I Landfill" shall be as defined in Rule 62-701.340(3)(a), F.A.C.
- (3) "Cycle Time" shall mean the elapsed time from the time the operator of a vehicle delivering Acceptable Waste to the Transfer Station is weighed in and recorded until the time at which the departure of that vehicle from the weigh station or scale house is recorded.
- (4) "Prohibited Wastes" are those waste materials that are prohibited at the Transfer Station, including Hazardous Waste, asbestos, biomedical wastes, biological waste, mercury-containing devices, radioactive waste, sludge and liquid wastes.
- (5) "Recyclables" means materials that are capable of being recycled and that are included in the City's recyclables processing contract.
- (6) "Solid Waste" means discarded waste materials in a solid state, consisting of garbage and rubbish or a combination thereof, excluding recyclable materials.
- (7) "Unacceptable Waste" means Solid Waste other than Acceptable Waste.

2.0 Acceptable Waste

The Transfer Station shall accept all Acceptable Waste delivered to the Transfer Station by the City or the City's collection contractor. Neither the City nor its' contractor shall knowingly deliver Unacceptable Waste to the Transfer Station. Should either do so, the County shall give prompt notice thereof to the City, and the City or its contractor, as applicable, shall either promptly remove and dispose of such Unacceptable Waste, at their own expense, provided such action does not impede operation of the Transfer Station or shall reimburse the County for the cost of removing and properly disposing of such Unacceptable Waste.

3.0 Capacity

The Transfer Station shall be designed, constructed and operated to properly accept and process all Acceptable Waste delivered to the Transfer Station by the City or its contractor over the term of this Agreement. The City and its contractor shall deliver all

Acceptable Waste to the Transfer Station. Unless the City has made other disposal arrangements, all other permitted Solid Waste shall be delivered to the Landfill. The County, with a minimum of 24-hours prior notice to the City, may direct that such other Solid Waste be delivered to the Transfer Station.

4.0 Hours of Operation

The Transfer Station shall accept all Acceptable Waste delivered to the Transfer Station by the City or its contractor daily during the following hours of operation:

Monday through Friday	3:00 AM to 5:00 PM
Saturday	8:00 AM to 12:00 PM

Operating hours shall be temporarily extended to include additional weekday hours, additional Saturday hours, or Sunday hours in cases of natural disasters or other emergencies as necessary to accept and process larger than normal quantities of Acceptable Waste.

The Transfer Station will be closed on Sundays and on the following holidays:

New Year's day
Thanksgiving Day
Christmas Day

In cases when one of the preceding holidays falls on a Sunday, the Transfer Station shall operate on the preceding Saturday and following Monday.

5.0 Minimum Standards

The County and City recognize that the successful implementation of this Agreement and the efficient operation of the Transfer Station are dependent upon the good faith performance of their respective obligations. The County and City hereby warrant that each will take all reasonable actions necessary to promptly and efficiently carry-out their responsibilities under this Agreement and will cooperate with each other, as necessary, to assure the effective, continuous performance of each party's obligations hereunder.

6.0 Performance Standards

The weigh station or scale house facility at the Transfer Station shall be designed to allow vehicles to be weighed in and out of the facility.

The Transfer Station shall be designed and operated to ensure efficient ingress, unloading, and egress of waste handling vehicles delivering Acceptable Waste. The

Transfer Station shall have sufficient capacity, equipment, and staffing to allow vehicles to enter, weigh, unload and exit the facility in a Cycle Time equal to or less than 20 minutes per load. The parties acknowledge and agree that timely processing of vehicles is of critical importance to the City, that the City will suffer damages if each vehicle is not processed within the required Cycle Time, and that such damages will be difficult, if not impossible, to calculate. In the event that the Cycle Time for any vehicle exceeds 20 minutes, the County shall pay to the City, or shall deduct from amounts otherwise owed the County by the City, the following amounts:

<u>Cycle Time for Vehicle (in minutes)</u>	<u>Action</u>
Greater than 21 , but less than 60	\$100 per incident
Equal to or greater than 60, but less than 120	\$200 per incident
Equal to or greater than 120	\$300 per incident

The amounts set forth above are to be paid to the City, or credited to amounts otherwise owed by the City, as liquidated damages and not as a penalty.

This provision is not applicable to: delays in the Cycle Time as a result of a force majeure event described in Section 12.11 of the Agreement, equipment failure by City owned vehicles or third party vehicles accessing the Transfer Station. The County will endeavor to promptly remove any disabled vehicle that impedes the transfer process.

Personnel at the weigh station or scale house facility shall generate a report, which will be provided to the driver of each such vehicle, prior to departure from that facility, detailing the gross, tare and net weights of the vehicle, the time and date, the transaction number, the vehicle identification number, and the Cycle Time.

The City shall notify the County no later than the second working day following the day when the required cycle time was exceeded. Failure to notify the County within the time allowed will void the claim. The County also shall deliver to the City a monthly report, in a form acceptable to the City, which provides the foregoing information.

7.0 Operating Standards

The City and the City's collection contractor shall at all times adhere to the following standards:

- (1) All vehicles entering or exiting the Transfer Station are subject to inspection for unsecured or uncontained waste, especially that which will result in roadside litter or leaching of liquids.

- (2) All vehicles shall be maintained in good repair with no leaking fluids including hydraulic, power steering, fuel, or transmission fluids.
- (3) Mufflers shall be maintained and replaced in accordance with Section 316.293 Florida Statutes.
- (4) Reckless driving, speeding, or unnecessary use of horns, revving of engines or other actions resulting in excessive noise shall be prohibited.
- (5) All vehicles shall come to a complete stop before proceeding on the scales. Only one vehicle shall be on the scale at any time.
- (6) All vehicles shall access the Transfer Station only from Capitol Circle and Gum Road unless directed by the County or a law enforcement officer.
- (7) All vehicles shall have an identification number clearly visible on the front, rear, and sides of the vehicle.
- (8) No smoking within the Transfer Station building.
- (9) Scavenging of any material deposited on the tipping floor shall be prohibited.
- (10) Cleaning of vehicles or containers shall be prohibited.
- (11) Swapping the position of roll-off containers from transport mode to dump mode, or the reverse sequence, shall be prohibited.

The County may assess administrative charges of \$100 per occurrence, pursuant to this provision on a monthly basis for each violation of these Operating Standards. The County shall notify the City of each violation by the end of the business day on which it occurs provided that such violation occurs prior to 3:00 p.m. on that date; otherwise, the County shall provide notice to the City of such violation by the end of the next business day. Failure to notify the City within the time allowed will void the claim.

8.0 Non-waiver

The failure of either the County the City, at any time, to require performance by the other of any provisions hereof shall in no way affect the right of that party thereafter to enforce the same. Nor shall waiver by the County or the City of any breach of provisions hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.